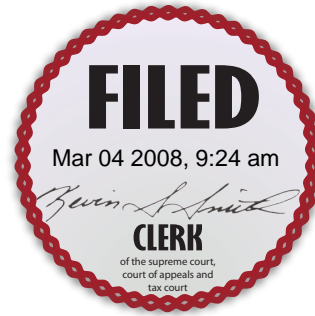


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ELLEN M. O'CONNOR
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BELL,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0705-CR-398
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49GO4-0608-MR-147898

March 4, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Michael O. Bell (“Bell”) appeals from his convictions, after a jury trial, of murder; carrying a handgun without a license, a class C felony; and being an habitual offender.

We affirm.

ISSUE

Whether the evidence is sufficient to support Bell’s convictions.

FACTS

On the evening of August 7, 2006, Bell called his half-brother, Accie Smith (“Accie”), about an alleged altercation that he had with someone named “Mike,” who had cut him. Bell asked Accie to get him a gun. Accie telephoned Erick Williams (“Erick”) because Erick’s 17-year-old brother, Destin Davidson (“Destin”), regularly carried a black Taurus nine-millimeter handgun. Accie went to Erick’s apartment, met with Destin, and convinced Destin to lend Bell his gun.

In the meantime, Bell borrowed a car owned by his girlfriend’s mother, Andre Fall (“Fall”),¹ who lived at 4245 Evanston Avenue. Her vehicle was an older model bright blue Ford Probe, with ageing paint and a pink breast cancer survivor ribbon magnet on the driver’s side rear quarter panel. Bell drove to Erick’s apartment complex and picked up Accie and Destin. Destin sat in the front passenger seat, while Accie sat in the back. As the men drove, Bell asked about the gun. Destin responded that he was carrying it on his person.

¹ Bell and his girlfriend, Adriana Franklin, lived diagonally across the street from Fall at 4226 Evanston Avenue.

Bell drove to 4719 North Caroline Avenue to fight “Mike,” taking Accie and Destin along to “watch [his] back.” (State’s Exh. 48 at 113). He parked the vehicle and asked Destin for his gun. Destin gave the gun to Bell. Bell pocketed the weapon, exited the vehicle, and walked into the alley. Accie climbed into the driver’s seat. Minutes later, Bell emerged from the alley. He gestured toward the vehicle for someone to join him. Accie began to get out of the vehicle, but Bell waved him off and indicated that he wanted Destin instead. Destin exited, leaving the passenger door open, and jogged to Bell’s location. Destin and Bell entered the alley, and Accie waited in the driver’s seat.

That evening, Janice Reynolds (“Janice”) was reading in her home, located at 4720 Caroline Avenue. She heard “a loud pop” that sounded like a firecracker, coming from the area near the home of her neighbor, Demory Bell (“Demory”). (Tr. 15). Janice resumed with her reading and heard another “pop.” (Tr. 15). Convinced that she had, in fact, heard gunshots, Janice looked outside and saw a vehicle moving slowly towards the alley. It was a bright blue older model vehicle that “looked like a Ford Probe.” (Tr. 19). She also noted that the “paint was tattered [and] worn around the edges,” and there was a faded breast cancer sticker on the rear quarter panel on the driver’s side. (Tr. 19). She observed that the driver, a dark-skinned African-American male with a “thick neck” and a closely cropped haircut, was intently focused on the alley. (Tr. 22). She also noted that as the vehicle moved, the driver had leaned to the right as if to shut the passenger door.

Reynolds’ neighbor, Demory, lived at 4719 North Caroline Avenue. That evening, Demory also heard a “pop” coming from the backyard or the alley. (Tr. 44). He opened his back door and saw someone crouched in the alley near the fence line of his

property. At one point, the light-skinned African-American, biracial, or Mexican subject looked directly at Demory and then ducked and “disappeared.” (Tr. 46). Then, Demory heard a second “pop” and saw the subject flee to the north. (Tr. 46).

Accie was talking on his cell phone when he heard the first gunshot. He leaned to his right and closed the passenger door of the vehicle and started the engine. After the second shot, he began to slowly drive the vehicle forward. Accie observed Bell jogging toward the vehicle, “hunched over like he was holding his stomach.” (Tr. 233). Bell entered the car talking, apparently, to himself. Accie heard him say, “I got him.” (Tr. 234, 249). When Accie asked about Destin, Bell responded that Destin had run off to the east. Accie then asked Bell about Destin’s gun. Bell responded that he had it on his person. Accie began to drive around looking for Destin, but Bell told him to take him to his girlfriend’s house on Evanston Avenue.

Minutes after observing the fleeing subject, Demory entered his backyard and walked toward the alley. He found Destin’s lifeless body in a pool of blood in the alley. Demory alerted his neighbor, Janice, and Janice telephoned 911. When the police arrived, Janice and Demory relayed their observations of the vehicle, the dark-skinned driver, and the light-skinned subject who had been crouched where Destin’s body was later found. The police determined that Destin had suffered two gunshot wounds to his head.

In the meantime, Accie dropped Bell off at his girlfriend’s house. Again, Accie asked Bell about Destin’s gun. This time, Bell responded that Destin had run off with it. Accie wanted to continue searching for Destin, but Bell told him to return Fall’s vehicle

to her home. Accie backed the vehicle into Fall's driveway, knocked at her door, and returned her car keys. He then walked back to the scene of the shooting to find Destin. When he arrived, Accie saw police vehicles and learned that someone had been killed. Accie returned to Bell's girlfriend's house. When he saw police cars approaching Fall's house, he went outside to investigate.

Officer Patrick Collins of the Indianapolis Police Department tried to locate the bright blue Ford Probe seen near the alley when the shots were fired. He "traveled northbound from Caroline Avenue and then west and [] snaked . . . through the[] neighborhoods ending up in the 4200 block of Evanston Avenue." (Tr. 115). In the driveway of 4245 Evanston Avenue -- later identified as Fall's house -- Officer Collins "noticed what appeared to be the front end of a blue Ford Probe sticking out behind a house[.]" (Tr. 115). The vehicle had been backed into the driveway. Officer Collins approached and observed faded paint and a pink breast cancer survivor ribbon magnet on the driver's rear quarter panel. Officer Collins called for backup and stayed on location with the vehicle.

Janice Reynolds was brought to the scene and she identified the vehicle as the one she had observed behind her home. When police questioned Fall, she said that Bell and Accie were the last to drive her vehicle. While the police were at Fall's residence, an officer observed a "medium complected" [sic] man pacing and watching the officers from across the street. (Tr. 138). The man identified himself as "Accie Smith." The officer advised Accie that he was wanted for questioning and transported him to police headquarters. In the meantime, the police towed Fall's vehicle, secured a search warrant,

and processed the vehicle. No weapon or blood was recovered from the vehicle; however, Bell's fingerprints were found on the interior and Destin and Accie's were found on the exterior.

After questioning Accie, the police considered Bell a suspect. On August 9, 2006, Bell appeared at police headquarters for questioning. He denied ever having a gun in his possession or shooting Destin. Instead, he accused "Mike" of the shooting. Police officers later identified "Mike" as Michael Chatman. Chatman denied ever fighting with Bell and had an alibi for the time of the shooting.

On August 14, 2006, the State charged Bell with the following: count I, murder,² a felony; count II, possession of a handgun by a serious violent felon,³ a class B felony; and count III, carrying a handgun without a license,⁴ a class C felony. On October 12, 2008, the State amended its charging information to include an habitual offender enhancement,⁵ based on Bell's prior convictions for robbery and battery.

Bell was tried before a jury from March 12, 2007, through March 14, 2007. At the close of the State's case, the defense orally moved for a directed verdict on the murder charge. The trial court denied the motion, finding that the State had met its *prima facie* burden. Subsequently, the jury convicted Bell of murder and carrying a handgun without

² Ind. Code § 35-42-1-1.

³ I.C. § 35-47-4-5.

⁴ I.C. § 35-47-2-1.

⁵ I.C. § 35-50-2-8.

a license as a class A misdemeanor. The State dismissed the serious violent felon charge and the class C felony enhancement to the handgun charge. On March 16, 2007, Bell waived his right to a trial by jury on the habitual offender charge. The trial court heard evidence and found Bell to be an habitual offender.

The trial court conducted Bell's sentencing hearing on April 13, 2007. The trial court imposed a fifty-five year sentence on the murder conviction, enhanced by thirty years on the habitual offender finding, for an aggregate sentence of eighty-five years. As to the handgun conviction, the trial court imposed a one-year sentence to be served concurrently with the murder sentence. Bell now appeals.

Additional facts will be supplied as necessary.

DECISION

Bell argues that the evidence is insufficient to sustain his convictions. Our standard of review with regard to sufficiency matters is well settled.

When reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. We look to the evidence and the reasonable inferences therefrom that support the verdict. The conviction will be affirmed if evidence of probative value exists from which the fact finder could find the defendant guilty beyond a reasonable doubt. We typically will not invade the province of the jury as the sole judge of the credibility of a witness. We will affirm unless 'no rational fact finder' could have found the defendant guilty beyond a reasonable doubt.

Williams v. State, 873 N.E.2d 144, 147 (Ind. Ct. App. 2007) (internal citations omitted).

A conviction may be based upon circumstantial evidence alone. *Agilera v. State*, 862 N.E.2d 298, 306 (Ind. Ct. App. 2007). Reversal is appropriate only when reasonable

persons would not be able to form inferences as to each material element of the offense.
Id.

A. Murder

Bell contends that the State failed to prove beyond a reasonable doubt that he intended to kill Destin.⁶ Murder is defined by Indiana Code section 35-42-1-1, which states in pertinent part: “A person who: (1) knowingly or intentionally kills another human being . . . commits murder, a felony.” Accordingly, the State was required to prove that Bell killed Destin either knowingly or intentionally. We find that the State presented sufficient evidence to prove that Bell killed Destin knowingly. “A person acts knowingly when he or she engages in conduct aware of the high probability he or she is doing so.” I.C. § 35-41-2-2(c).

In his brief, Bell acknowledges that the State “proved circumstantially that [he] was present on the scene where [Destin] was fatally shot and that he had the opportunity to shoot him.” Bell’s Br. at 10. Bell maintains, however, that the State failed to prove that he intended to kill Destin. We disagree. “Intent to kill may be inferred from the nature of the attack and circumstances surrounding the crime.” *Perez v. State*, 872

⁶ In support of his claim that the State failed to present sufficient evidence of his intent to kill Destin, Bell notes that during its closing arguments, the State commented that “[m]aybe [Bell] didn’t even mean for [the gun] to go off on that first shot.” (Tr. 635). Defense counsel objected on grounds that the State was “pursuing a theory of absolute knowing intentional murder – not that this was an accident act.” (Tr. 635).

In his brief, Bell argues that when the State made the foregoing statement, it conceded [that] the first wound may have been inadvertent or accidental. * * * Then, the State invited the jury to speculate that the second shot and his subsequent actions were intentionally undertaken to cover up the first accidental one, arguing that the shooting was part of a plan.

Bell’s Br. at 13-14. We do not give this argument or the State’s comment during closing arguments significant consideration in light of the trial court’s instruction that “final arguments are not evidence,” and that jurors were free to “accept or reject those arguments” (Bell’s App. 93).

N.E.2d 208, 213-14 (Ind. Ct. App. 2007). Moreover, “[i]ntent to kill may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily injury.” *Id.*

Accie testified that Bell wanted a gun, presumably to shoot Mike. Accie secured Destin’s gun for Bell. When they arrived on Caroline Avenue, Bell asked Destin for the gun and pocketed it before exiting the vehicle. He later gestured for Destin to join him in the alley. Destin complied and walked into the alley with Bell. Moments later, two gunshots rang out. Bell ran back to the vehicle alone, hunched over and talking to himself. Accie heard him say, “I got him.” (Tr. 249). Bell denied knowledge of Destin’s whereabouts, stating that Destin had run off in the other direction. Bell also stated that he still had Destin’s gun. On two occasions, Bell thwarted Accie’s efforts to locate Destin. Destin was later found dead in the alley with two gunshot wounds to his face. The detectives determined that he had been likely killed with his own Taurus nine-millimeter handgun; however, the gun was never recovered.⁷

The autopsy findings indicated that Destin was shot first in the right cheek and then in the right temple. The gunpowder stippling pattern and singeing of Destin’s skin indicated that the barrel of the gun was one inch from Destin’s face when the first gunshot was fired, and one-quarter to one-half inch when the second shot was fired. The

⁷ Firearms specialist Cole Goater of the Indianapolis-Marion County Forensic Services Agency testified that markings on the cartridge casings found next to Destin’s body were consistent with them having been fired from a Taurus nine-millimeter handgun. Thus, he testified that based upon his experience, a Taurus nine-millimeter handgun could have fired the bullets that killed Destin. During the investigation, Destin’s family provided the police with Destin’s box of ammunition for his Taurus. The headstamp printed on the cartridge casings recovered from the crime scene was identical to the headstamp on the bullets found among Destin’s belongings.

medical examiner testified that the first close-range shot incapacitated Destin, causing him to fall to the ground. Then, while Destin lay prone on the ground, the shooter placed the gun barrel against Destin's temple and pulled the trigger.

Bell was in possession of the handgun when he entered the alley with Destin. The medical examiner's findings indicate that the shooter pointed the gun at Destin's head twice at close range and pulled the trigger. Such conduct constitutes knowing conduct. "[D]ischarging a weapon in the direction of a victim is substantial evidence from which the jury could infer intent to kill." *Id.* In addition, Bell's comments, overheard by Accie immediately after the shooting – namely, "I got him," – strongly support the inference that Bell had "successfully" hit his target. (Tr. 234, 249).

The evidence presented to the jury and reasonable inferences therefrom reveal several facts that support the conclusion that Bell acted knowingly when he shot Destin. Thus, because the State presented sufficient evidence of Bell's intent to kill Destin, we sustain his murder conviction.

B. Carrying a Handgun without a License

Next, Bell argues that the State presented insufficient evidence to convict him of carrying a handgun without a license, as a class A misdemeanor. To convict Bell of this offense, the State was required to prove that Bell carried a handgun without a license in a vehicle or on or about his body; while not at his dwelling, fixed place of business, or on his property. I.C. § 35-47-2-1(a).

At trial, during the State's case-in-chief, Accie testified that Bell had urged him to find a gun for him. Accie knew that Destin regularly carried a gun and convinced him to

join them as Bell searched for Mike. They drove to Caroline Avenue, where Destin gave the gun to Bell. Bell pocketed the gun before entering the alley. After the shooting, Bell told Accie that the gun was still in his possession.

Bell calls Accie's credibility into question because initially Accie told police that Bell did not have a gun. Further, Bell argues, Accie's testimony is not credible because Accie was on probation and facing significant "back-up" time when he spoke with the police. As the State correctly notes in its brief, this Court may not reweigh the evidence or judge the credibility of the witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). "It is the unique province of the jury to assess witness credibility." *Gantt v. State*, 825 N.E.2d 874, 878 (Ind. Ct. App. 2005). We will impinge upon that province only when the conviction is supported solely by the inherently contradictory testimony of one witness and there is a complete lack of circumstantial evidence of the defendant's guilt.⁸ *Id.* Such is not the case here.

Our review of the evidence presented to the jury and inferences therefrom reveal several facts that support the conclusion that Bell carried a handgun without a license. Thus, we find that sufficient evidence exists to support Bell's conviction.

C. Habitual Offender Enhancement

Lastly, Bell argues that although the State proved that he was arrested for the two prior felonies that justified the habitual offender enhancement, the State failed to prove beyond a reasonable doubt that he was convicted and sentenced for those offenses,

⁸ Incredibly dubious or inherently improbable testimony "is that which runs counter to human experience, and which no reasonable person could believe." *Campbell v. State*, 732 N.E.2d 197, 207 (Ind. Ct. App. 2000).

because “[t]he abstract of judgment only contained his name and cause number[s] and not any pertinent identifying characteristics.” Bell’s Br. at 10. We disagree.

The habitual offender statute, codified at Indiana Code section 35-50-2-8, provides, in pertinent part, as follows:

- (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

* * *

- (c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:
 - (1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and
 - (2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

During the habitual offender phase of the trial, the State incorporated “all evidence and testimony on the previous underlying portion of the trial.” (Tr. 645). Included in this evidence was Bell’s statement that he was born on October 7, 1977. The State also called the record keeper for the identification branch of the IPD to testify. Joe Johnson (“Johnson”) testified that his duties included (1) maintaining and keeping arrest records of individuals who are arrested in Marion County; (2) testifying as keeper of IPD records; and (3) identifying individuals arrested in Marion County through fingerprint testing.

The State introduced into evidence State’s Exhibits 69 and 71, certified copies of two IPD officer arrest reports, which contained the arrestee’s fingerprint information. The State also introduced State’s exhibit 73, Bell’s right thumbprint. Johnson testified that he had compared Bell’s thumbprint to the thumbprints contained in State’s exhibits

69 and 71 and concluded, based on his experience and expertise, that “they were all made by one and the same [individual].” (Tr. 650). We find that based upon the foregoing evidence, the finder of fact could reasonably have concluded that Bell was the individual arrested in the cases represented by State’s exhibits 69 and 71.

The State then introduced State’s exhibit 70, containing certified copies of the charging information and abstract of judgment in cause number 49G03-9805-CF-077701. The matter involved a Michael O. Bell, who was convicted in 1998 of battery and carrying a handgun without a license as class C felonies, and carrying a handgun without a license as a class A misdemeanor. Michael O. Bell was described as an African-American male, born on October 7, 1977. The corresponding State’s exhibit 69 indicates that the arrested person was charged in Criminal Court 3, with a cause number identifying the year as 1998 and ended with “077701.”

Next, the State also introduced State’s exhibit 72, which contained certified copies of the charging information and abstract of judgment in cause number 49G05-0301-FB-005838. This matter involved the 2003 conviction of a Michael Bell for a class C felony robbery committed in 2002. Bell was described as an African-American male, born on October 7, 1977. The corresponding arrest report contained in State’s Exhibit 71 indicated that the arrested individual had been charged in Criminal Court 5, and had been assessed a cause number that identified the year as 2003 and ended with “005838.”

Based upon the foregoing facts, we find that the State presented sufficient evidence to justify Bell’s conviction for being an habitual offender. As the State notes in its brief,

The coincidence in the identifying information between the arrest reports and the Information and Judgments is sufficient to sustain [the conviction]. The [correspondence of the] name, date of birth, race, type of crime, and court cause number permit the reasonable inference that the Michael Bell in State's Exhibit 70 is the same person in State's Exhibit 69, and that the Michael Bell in State's Exhibit 72 is the same person in State's Exhibit 71. [Moreover], the thumbprint on both State's Exhibits 69 and 71 is conclusively [Bell]'s thumbprint.

State's Br. at 12.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.